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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 97-128
	)	
Martin W. Hoffman, Trustee-in-Bankruptcy for Astroline Communications Company	)	
	)	
For Renewal of License of Station WHCT-TV, Hartford, Connecticut	)	File No. BRCT-881201LG
	)	
and	)	
	)	
Shurberg Broadcasting of Hartford	)	
	)	
For Construction Permit for a New Television Station to Operate on Channel 18, Hartford, Connecticut	)	File No. BPCT-831202KF

To: The Commission

OPPOSITION OF RICHARD P. RAMIREZ TO THE JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Richard P. Ramirez ("Ramirez") hereby opposes the Joint Request for Approval of Settlement Agreement ("Joint Settlement Request") filed by Martin W. Hoffman, Trustee-In-Bankruptcy for Astroline Communications Company Limited Partnership ("Trustee"), licensee of Station WHCT-TV, Hartford, Connecticut; Two If By Sea Broadcasting Corporation ("TIBS"), and Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("Shurberg") (collectively, the "Joint Parties").[1] Ramirez respectfully requests that the Federal

1. Ramirez understands that amendments have been made to the Sale of Station and Settlement Agreement, and additional amendment documents exist. Ramirez has not been served with a copy of these documents, and reserves his right to supplement this Opposition once he has (continued...)

Communications Commission ("FCC" or "Commission") deny the request (or at a minimum deny payment to Shurberg) as contrary to the Communications Act of 1934 and Commission's rules, and not in the public interest.[2]

Statement of Interest and Summary

Ramirez, a party to the above-referenced proceeding, is the former General Partner of Astroline Communications Company Limited Partnership ("Astroline"), and was a major participant in the hearing proceeding that was conducted at the FCC. Administrative Law Judge John M. Frysiak determined that Ramirez indeed controlled Astroline and its operations of WHCT-TV, Hartford, Connecticut,[3] and thus has a substantial interest in the outcome of this proceeding.

FCC approval of the Joint Settlement Request is not in the public interest because it unjustly enriches a highly suspect individual and abuser of the FCC (and judicial) process, Alan Shurberg, whose protracted litigation significantly wasted FCC resources, nearly dismantling FCC policies and contributed to the bankruptcy of an otherwise *bona fide* and qualified broadcasting entity which denied broadcast television service to the Hartford, Connecticut community for nearly two decades. But for the protracted litigation caused by Shurberg, Astroline would have been able to obtain equity or debt financing and financially able to operate

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1. (...continued)
had the opportunity to review these documents.

2. Ramirez is not opposed to quickly resolving this proceeding by terminating the matter through settlement. Ramirez objects to the unjust enrichment that Shurberg will receive under the terms of the Station Sale and Settlement Agreement.

3. *Initial Decision*, FCC 99D-1, released April 16, 1999.

a viable television station in Hartford, Connecticut. Shurberg destroyed every opportunity for Astroline to operate the station due to his myriad legal marathons and exchanges at the FCC and the courts. Such action, no matter how earnest the desire to provide broadcast television service, should not be rewarded by the financial windfall as contemplated in the Joint Settlement Request.

I. Shurberg Lacks Standing to Be a Party to the Sale of Station and Settlement Agreement.

In its 1984 decision granting the distress sale of WHCT-TV to Astroline, the Commission unequivocally stated that "competing applications are ordinarily not permitted to be filed against license renewal applications designated for hearing."[4] Moreover, the Commission stated that Faith Center's renewal application for station WHCT-TV was placed in protected status from competing application until the completion of the renewal proceeding, and that "Shurberg had no such right as December 1, 1983, to file a competing application against the renewal application for Station WHCT-TV pending the outcome of the proceeding."[5] At this juncture, Shurberg was foreclosed from the proceeding. Indeed, Shurberg never filed a new application nor a Petition to Deny against Astroline once the Commission granted the distress sale. Procedurally, Shurberg was out of the case, and his application should have been dismissed. However, the Commission

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4. *Faith Center, Inc.*, Memorandum Opinion and Order, BC Docket No. 80-730, File No. BRCT-348, 99 FCC 2d 1164, 1168 (1984) (citing *RKO General, Inc.*, 89 FCC 2d 297, 315-26 (1982), *affirmed sub nom. Atlantic Television Corporation v. FCC*, Nol 82-1263 (D.C. Cir., Oct. 21, 1982).

5. *Id.*

never accepted for filing Shurberg's application nor dismissed the application either.[6] Rather, the Commission stated that competing applications would be considered if Astroline failed to effectuate the assignment of WHCT-TV. Astroline did in fact effectuate assignment of the station. Thus, Shurberg's application should be considered dismissed and moot by default. Accordingly, Shurberg does not have legal interests in the Station, and lacks standing to be a party to the Sale of Station and Settlement Agreement.

II. The Joint Settlement Request Violates Section 311 of the Communications Act of 1934 and Section 73.3523 of the FCC Rules.

The Joint Settlement Request proposes to pay Shurberg Seven Million Four Hundred and Eighty Thousand Dollars ($7.48 million) to dismiss with prejudice his pending, competing application for a construction permit for WHCT-TV (File No. BPCT-831202KF). This proposed payment clearly violates Section 311(d)(1) of the Communications Act of 1934, as amended, and Section 73.3523(b)(1) which require the competing applicant seeking to dismiss its application prior to the Initial Decision to certify that it has not or will not receive any money or consideration in exchange for dismissing its application.[7] In addition, this proposed payment violates the spirit and intent of these federal laws which were promulgated to prevent persons from filing a mutually exclusive application for the purposes of reaching a settlement. Although the Joint Parties indicate that Shurberg did not file his initial application for the purposes of

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6. *Initial Decision* at 6.

7. 47 U.S.C. §311(d)(1) and 47 C.F.R. § 73.3523(b)(1) (1989).

receiving a settlement payment,[8] Shurberg's renewed opposition to the 1993 proposed sale of WHCT-TV, after his judicial calamity before the United States Supreme Court, was an attempt to frustrate the parties and the FCC to be paid to simply go away. As the Commission is well aware, this matter has been pending for nearly two decades, and should have been resolved after the United States Supreme Court upheld the Commission's distress sales policy as constitutional.[9] Moreover, Astroline, at every stage of this proceeding, proved its qualification to be the licensee of WHCT-TV and was victorious before the administrative law judges ("ALJs"), the FCC and the courts. After the highest court in the land spoke, Shurberg's application should have been dismissed. Rather, he continued to abuse the FCC process by maintaining his application before the FCC and renewing his opposition to a proposed sale of the station between the Trustee and TIBS. At this point, his only motivation is to extort a pay day. Shurberg had wasted a lot of time and money in this matter, and if there was some glimmer of hope for him, it had to be settlement because the ALJ's decisions and the FCC's decisions were consistent–Astroline was qualified to be the licensee of WHCT-TV. It did not appear in 1993 that the ALJ or the Commission itself would rule differently. Indeed the 1999 Initial Decision once again proved this point when it ruled that Astroline did not "misrepresent facts to the

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8. *See* Joint Settlement Request at 6-7 (citing *Trinity Broadcasting of Florida, Inc.*, 14 FCC Rcd 20518 (1999) and *EZ Communications, Inc.*, 12 FCC Rcd 3307 (1997).

9. *See Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990).

Commission and the federal courts in connection with statements it made concerning its status as a minority controlled entity", and the Trustee's renewal application was granted.[10]

Furthermore, the Joint Parties reliance on *Trinity Broadcasting* is misplaced and inapplicable to the instance case. The Commission clearly indicates in *Trinity Broadcasting* that "comparative renewal proceedings must be decided on an *ad hoc* basis."[11] As a result, the Commission must a make a determination anew on whether to waive Section 73.3523 in this case. It cannot and should not rely on the legal precedent set in *Trinity Broadcasting* to be the guiding factor in determining whether to waive Section 73.3523 in this case. Each decision must be made on a case-by-case basis. In any event, this case is clearly distinguishable from *Trinity Broadcasting*. First, in settling the case between the two *bona fide* competing applicants, Trinity paid $28 million to purchase all of the stock and equity in Glendale Broadcasting Company and Maravillas Broadcasting Company as well as to dismiss their application. No such corporate buy-out is proposed between the Joint Parties. As discussed more fully below, Shurberg will receive a financial windfall and still maintain all stock and equity in Shurberg Broadcasting Company of Hartford. Second, the other parties in *Trinity Broadcasting* who received settlement payments were non-profit organizations that filed petitions to deny the underlying renewal application, a policy encouraged by the Supreme Court in *Red Lion Broadcasting v. FCC*, 395 U.S. 367 (1969). The proceeds of their settlement agreement covered their legitimate and prudent legal expenses as well as donated funds to charitable causes of those organizations. This

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10. *Initial Decision* at ¶79.

11. *Trinity Broadcasting* at ¶14.

is not the case here. Accordingly, the Commission cannot (because of its requirement to review these cases on an *ad hoc* basis) and should not (because of different fact patterns) rely on *Trinity Broadcasting* as precedent for determining whether to approve the instant Joint Settlement Request.

Neither does the Joint Settlement Request meet the conditions of Section 73.3523(c). Under this subsection, settlement payment for the withdrawal or dismissal of a competing application after the Initial Decision is permissible so long as the settlement payment does not exceed the applicants legitimate and prudent expenses. First, the Joint Settlement Request is not being made after an Initial Decision has been reached. Second, the declaration of Alan Shurberg fails to certify that the payment received is not in excess of his legitimate and prudent expenses in challenging Astroline, and he provides no documentation justifying this settlement payment. Furthermore, Shurberg failed to mitigate his loss by continuing to challenge the licensee (and TIBS) after the United States Supreme Court ruled against him. Therefore, although Shurberg may have spent a considerable amount of money prosecuting his application, he had ample opportunity to mitigate his damages when he lost at every junction of the myriad of ALJ, FCC and Supreme Court decisions ruling against him.[12]

III. The Joint Settlement Request is Not in the Public Interest Because It Unjustly Enriches a Bad Actor, Shurberg.

Shurberg has spent the last 16 years challenging Astroline's qualification to be a licensee to no avail, and has gone so far as to challenge the constitutionality of the Commission's distress

12. Ramirez questions whatever legal expenses that Shurberg may attempt to justify because Jonathan Shurberg, the attorney of record has some familial relationship to Alan Shurberg, and has been the attorney of record for about a year.

sales policy, again to no avail. In 1993, he added TIBS to his hit list. Now that a "white knight" has come on the scene, one with deep pockets, Shurberg is ready to make amends and settle with the Trustee and TIBS. Despite his initial application filing in 1983, Shurberg's motives are transparent. Ramirez suspects that had Astroline been in a financial position to offer Shurberg over $7 million that he would have ended this fiasco a long time ago. Shurberg's continued challenging of Astroline's qualifications to be the licensee of WHCT-TV was in bad faith, and his willingness to settle this matter and have his application dismissed with prejudice at this late juncture is an abuse of Commission process.[13]

FCC approval of the Joint Settlement Request will unjustly enrich Shurberg. As mentioned above, the facts herein do not fall squarely within the parameters set forth in Section 73.3523(b) or (c), and the Joint Settlement Request clearly violates both subsections. However, if the Commission determines that subsection (c) should apply, it can only allow Shurberg to recover costs associated with prosecuting his application. As a result, the Commission must require Shurberg to account for his legitimate and prudent expenses in determining an appropriate settlement amount. Shurberg's legitimate and prudent expenses do not add up to Seven Million Four Hundred and Eighty Thousand Dollars ($7.48 million). Shurberg's failure to mitigate his expenses after the Supreme Court decision in *Metro Broadcasting* was not prudent, and therefore not recoverable. Likewise, Shurberg's expenses as it relates to any and all filings

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13. *See In re Applications of WWOR-TV, Inc. for Renewal of License of Station WWOR(TV), Secaucus, New Jersey, and Garden State Broadcasting limited Partnership for a Construction Permit Secaucus, New Jersey,* MM Docket No. 88-382, file No. BRCT-871221KE, File No. BPCT-871223KG, 7 FCC Rcd 636 (1991) (dismissed as moot a Joint Request for Approval of Settlement Agreement because parties had entered into settlement for the purpose of settlement, an abuse of process).

made after the Supreme Court's decision, including the bankruptcy proceeding, is not prudent since Shurberg did not have standing to be a party to the Settlement Agreement. As such, the Commission must not approve settlement of this proceeding as to Shurberg without a showing that his expenses are legitimate and prudent.

IV. Shurberg is Not a *Bona Fide* Mutually Exclusive Applicant, and Has Been a Reclusive, Albeit Active Player in the Commission's Hearing Proceedings.

Shurberg is not a *bona fide* applicant. Rather, he is unqualified to hold the license for WHCT-TV. Shurberg's character qualifications have never been examined by the Commission primarily because Shurberg kept the spotlight on Astroline, the Commission's distress sales policy and now TIBS. The record evidence reflects that Shurberg himself is not qualified to be a FCC licensee.[14] First, Shurberg's application was patently defective and should not have been accepted for filing. To date, Shurberg has failed to update his application, and principally relies on his original filing made against Faith Center, Inc.'s renewal application.[15] Second, Shurberg failed to submit information at the Commission's behest. No character qualification information has ever been disclosed to the Commission concerning Shurberg. For example, Shurberg has avoided all depositions and discovery requests during the hearing. He never testified in the hearing proceedings. This "smoke and mirrors" approach to applying for a licensee runs afoul of the Commission's requirements for a broadcast licensee. Third, Shurberg has not and cannot establish full integration in the broadcast community. Shurberg has not established residency in

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14. *See generally*, Petition to Dismiss Application of Shurberg Broadcasting of Hartford of Martin W. Hoffman, Trustee-in-Bankruptcy and Two If By Sea Broadcasting Corporation filed August 14, 1997.

15. *Initial Decision* at ¶18.

the Hartford, Connecticut community. Indeed, this instant Joint Settlement Request list a Silver Spring, Maryland address for Shurberg. Fourth, Shurberg's application was questionable regarding tower site availability, and thus not meeting the Commission's technical qualifications. Fifth, Shurberg's financial qualification is unknown. Shurberg has never disclosed his employment or financial investments capable of operating WHCT-TV. Moreover, Shurberg violated *ex parte* rules thus further abusing the FCC process, and he has misrepresented and has lacked candor in his representation of the Astroline court proceedings. Taken in totality, these issues are an indicia that Shurberg is unqualified to be a FCC licensee. The Commission must not reward a questionable applicant with the type of financial windfall proposed in the joint Settlement Request. Since the Commission has not reached the *bona fides* of Shurberg's application, it should deny the Joint Settlement Request altogether, or at a minimum, deny settlement payment to Shurberg. To decide otherwise would be arbitrary and capricious and contrary to federal statute.[16]

WHEREFORE THE PREMISES CONSIDERED, Richard P. Ramirez respectfully requests that the Commission either refuse to approve the Joint Request for Approval of the Settlement Agreement, or the reject the portion of the Settlement Agreement regarding payment to Alan Shurberg d/b/a Shurberg Broadcasting Company of Hartford since he is a *de facto* non-party to the Settlement Agreement, and lacks standing to be a party.

Respectfully submitted,

RICHARD P. RAMIREZ

Dated: May 17, 2000

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16. 47 U.S.C. §311(d).

DECLARATION OF RICHARD P. RAMIREZ

I, Richard P. Ramirez, former general partner of Astroline Communications Company Limited Partnership, hereby certify under penalty of perjury that I was an active participant in the captioned proceeding. I also certify that I have read the foregoing Opposition to the Joint Request for Approval of Settlement Agreement. All of the statements contained therein are true and accurate to the best of my knowledge and belief. I also certify that this declaration was not given under fraud, coercion or duress.

May 17, 2002
Date

Richard P. Ramirez

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CERTIFICATE OF SERVICE

I, Lisa M. Balzer, hereby certify that I deposited a copy of the foregoing "Opposition of Richard P. Ramirez to the Joint Request for Approval of Settlement Agreement" into the first class mail on May 17, 2000, postage prepaid, to each of the following:

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